

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENYA DESHON YOUNG,

Defendant-Appellant.

UNPUBLISHED
November 2, 2004

No. 248643
Wayne Circuit Court
LC No. 02-010585-01

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of carrying a concealed weapon, in violation of MCL 750.227. We affirm.

A police officer observed defendant approach a vehicle and conduct what appeared to be a narcotics transaction. A search of defendant's person revealed a handgun. A defense witness testified that defendant approached the other vehicle in order to speak with the driver about plans for a party. The jury acquitted defendant of possession with intent to deliver marijuana, MCL 333.7401(2)(d), and possession of a firearm during the commission of a felony, MCL 750.227b, but convicted him of carrying a concealed weapon.

Defendant argues that trial counsel rendered ineffective assistance by failing to move for an evidentiary hearing to challenge the validity of his arrest. We disagree and affirm. To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. Counsel must have made errors so serious that he was not performing as the "counsel" guaranteed by the federal and state constitutions. US Const, Am VI; Const 1963, art 1, § 20; *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001). Counsel's deficient performance must have resulted in prejudice. *Id.* To demonstrate the existence of prejudice, a defendant must show a reasonable probability that but for counsel's error, the result of the proceedings would have been different. *Id.* The defendant bears the burden of proving that counsel afforded ineffective assistance. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

The constitutional validity of an arrest depends on whether probable cause to arrest existed at the time the arrest was made. *People v Lyon*, 227 Mich App 599, 611; 577 NW2d 124 (1998). Probable cause to arrest exists where the facts and circumstances known to a police officer and of which he has reasonably trustworthy information are sufficient in themselves to

warrant a reasonably cautious person in believing that an offense has been or is being committed. *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996).

Defendant did not seek an evidentiary hearing on the issue of ineffective assistance; therefore, our review is limited to mistakes apparent on the record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). Defendant does contend that the police lacked probable cause to arrest him. *Champion, supra* at 115. He seems to argue that the testimony that he approached the driver of the other vehicle to discuss plans for a party was more credible than the officer's testimony regarding the alleged narcotics transaction. The credibility of the witnesses was for the jury to determine. *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). Defendant's assertion that had the trial court conducted an evidentiary hearing it would have learned that the driver of the vehicle was not charged and, as a result, all charges against defendant would have been dismissed, is speculative. Defendant has not demonstrated prejudice in that he has not shown that but for counsel's alleged error the outcome of the proceeding would have been different, *Carbin, supra* at 600, and has not overcome the presumption that counsel rendered effective assistance. *Rockey, supra* at 76.

We affirm.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Richard A. Bandstra